IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.56 OF 2006
IN
WRIT PETITION NO.5309 OF 2005

Sudhagad Education Society & Anr. ....Appellants
V/s.
Ingale Laxman Shankar & Ors. ....Respondents

Mr.M.V. Limaye for the Appellants.
Mr.V.S. Deokar for Respondent No.1.

CORAM : R.M. LODHA, &
S.J. VAZIFDAR, JJ.
DATED : 7TH JULY, 2006.

P.C. :

We heard Mr.M.V. Limaye, counsel for the Appellants and Mr.V.S. Deokar, counsel for the Respondents.

2. Admit. Mr.Deokar waives services for Respondent No.1. Respondent Nos.2 and 3 are formal parties, and therefore, their service is dispensed with.

3. Looking to the controversy involved in the Letters Patent Appeal, we take up the Appeal for hearing at this stage itself.

4. Respondent No.1 (hereinafter to be referred as "the teacher") filed an Appeal against the present Appellants (hereinafter to be referred as "the management") challenging his termination from the service with effect from 17.8.2004. He prayed for reinstatement in service with full back wages and consequential benefits. The School Tribunal after hearing the parties by order dated 31.3.2005 allowed the Appeal filed by the teacher ; set-aside the order of termination and declared that the teacher is entitled to reinstatement in service with full back wages and consequential benefits. The Tribunal also recommended to the State Government that back wages should be deducted from the grant due and payable to the management.

5. Aggrieved by the order of the School Tribunal, the management filed the Writ Petition being Writ Petition No.5309 of 2005 before this Court. On 25.11.2005, the learned single Judge directed the management to deposit the amount of back wages within two weeks therefrom. It was observed that failing which the Petition shall stand dismissed without reference to the Court.

6. According to the management the amount of

back wages that was due and payable to the teacher from the date of termination until reinstatement was deposited within time as per the order dated 25.11.2005. The teacher on the other hand contends that he is entitled to back wages not from the date of termination i.e. 17.8.2004 but from 16.6.1997 ; and, therefore, the management defaulted in complying with the order dated 25.11.2005.

7. The learned single Judge in his order dated 13.1.2006 directed the management to deposit in the Court a sum of Rs.10,36,448=81 ps. within four weeks as per the order dated 25.11.2005 minus the amount already deposited, failing which it was directed that the Writ Petition shall not be taken up for admission and shall stand dismissed without reference to the Court.

8. The order dated 13.1.2006 is not sustainable for more than one reason. For one, the order dated 25.11.2005 does not direct the deposit of back wages from 16.6.1997 as has been basis for the learned single Judge to order the management to deposit the amount of Rs.10,36,448=81 ps. The other, when the Tribunal declared in its order dated 31.3.2005 that the teacher is entitled to reinstatement in service

with full back wages, obviously it meant that the teacher shall be entitled to back wages from the date of termination in service until reinstatement. Admittedly, the teacher was terminated from service by the order dated 17.8.2004. In this view of the matter, the claim of the teacher that he is entitled to back wages from 16.6.1997 till 31.3.2005 amounting to Rs.10,36,448=81 ps. is apparently misconceived. The learned single Judge erred in directing the management to deposit the said amount and observing that in default the Writ Petition shall not be taken up for admission and stand dismissed without reference to Court.

9. The question as to whether the teacher was entitled to the wages from 16.6.1997 was not at all under consideration before the Tribunal. The Tribunal has not gone into this aspect at all and, therefore, the contention of the teacher that the Tribunal has awarded back wages to him from 16.6.1997 cannot be accepted. If the teacher has not been paid wages from 16.6.1997, the course available to him is to pursue the appropriate legal remedy for recovery of wages which according to him were not paid while he was in service before the order of termination but surely that was not and could not have been the subject

matter of consideration in the Appeal filed by the teacher challenging his termination.

10. We, accordingly, allow the Appeal and set-aside the order dated 13.1.2006. Writ Petition No.5309 of 2005 is restored to file. The management is directed to pay to the teacher back wages if not paid so far from the date of termination until the date of reinstatement. The said payment shall be made within two weeks from today. Needless to say that as per the order of the School Tribunal, reinstatement has been ordered with all consequential benefits and, therefore, the management must compute the back wages payable to the teacher accordingly. We also direct the management to pay to the teacher his monthly salary and allowances on time.

11. Writ Petition No.5309 of 2005 be posted before the learned single Judge for consideration.

Letters Patent Appeal stands disposed of.

(R.M. LODHA, J.)

(S.J. VAZIFDAR, J.)